

Michael P. Richter

(b)(6)

**VIA EMAIL**

March 17, 2014

Defense Intelligence Agency

c/o [REDACTED] (b)(3):10 USC 424; (b)(6)

Pre-publication Review

Office of Corporate Communications

Re: Appeal of DIA Case No. 14-030 and DOPSR Case No. 14-S-0806

To Whom It May Concern:

I write to appeal the March 6, 2014 pre-publication review decision (the “Decision” at Ex. A) of my article entitled “Comedy and Terror in Guantanamo Bay” (the “Article” at Ex. B) instructing me to “DELETE or REVISE”

(b)(3):50 USC 3024(i)

In the Article I make clear that I never saw the Document while in government. In addition, while in government my areas of responsibility never touched upon Mr. al-Nashiri or anything related to him. Accordingly, I am incapable of authenticating the Document or providing insight into its contents based on classified information I acquired by virtue of my employment with the United States Government (“USG”). Therefore, I respectfully request that you reverse the Decision and authorize me to publish my Article as submitted on January 27, 2014 without deletions or revisions.

**1. My Secrecy Agreement Does Not Bar Me From Referencing or Discussing the Document Because I Never Saw It While In Government**

My secrecy agreement precludes me from disclosing information that I learned as a consequence of possessing a security clearance.<sup>3</sup> In interpreting a CIA secrecy agreement, the

<sup>1</sup> Although this 2,696 word Article was submitted for pre-publication review on January 27, 2014, I did not receive the Decision until March 6, 2014, which was after the 30 day time limit for responses. See *U.S. v. Marchetti*, 466 F.2d 1309, 1317 (4th Cir. 1972), cert. denied 409 U.S. 1063 (“We should think that, in all events, the maximum period for responding after the submission of material for approval should not exceed thirty days”).

(b)(3):50 USC 3024(i)

<sup>3</sup> I was never provided with copies of any of my secrecy agreements with the USG, and therefore this statement is based upon my best recollection of my secrecy agreement. Therefore, I respectfully request that the USG provide

Fourth Circuit ruled that a former CIA officer “may not disclose classified information obtained by him during the course of his employment which is not already in the public domain.” *U.S. v. Marchetti*, 466 F.2d 1309, 1317 (4th Cir. 1972), cert. denied 409 U.S. 1063 (emphasis added); *McGehee v. Casey*, 718 F.2d 1137, 1141 (D.C. Cir. 1983) (“secrecy agreement applies only when he seeks to publish classified information that has come or shall come to [his] attention by virtue of [his] connection with the Central Intelligence Agency. The agreement does not extend to unclassified materials or to information obtained from public sources.”) (internal quotation marks omitted and emphasis added)). According to an article posted on CIA’s public website by John Hollister Hedley, the former Chairman of CIA’s publications review board, CIA regulations require pre-publication review for “material on any subject about which the author has had access to classified information in the course of his or her employment.” See John Hollister Hedley, *Reviewing the Work of CIA Authors: Secrets, Free Speech, and Fig Leaves* at Ex. C.<sup>4</sup>

(b)(3):50 USC 3024(i)

This was approximately one year after my clearance was suspended due to my resignation from the USG. Accordingly, my secrecy agreement does not preclude me from referencing or discussing the Document. In fact, the law as set forth by *Marchetti* and *McGehee* demonstrate that I am entitled to reference and discuss the Document because (1) it did not “come to [my] attention by virtue of [my] connection with” the U.S. intelligence community, and (2) I “obtained [it] from public sources”.

## 2. The Document Is In The Public Domain

In *Marchetti*, the Court ruled that a former CIA officer has “as much right as anyone else” to republish classified information that has been publicly disclosed. *Marchetti* at 1317 (“Information, though classified, may have been publicly disclosed. If it has been, *Marchetti* should have as much right as anyone else to republish it”); *Snepp v. United States*, 444 U.S. 507, 513, n. 8 (1980) (“If in fact information is unclassified or in the public domain, neither the CIA nor foreign agencies would be concerned”). Mr. Hedley wrote that the *Marchetti* decision “places squarely on the Agency the burden of proof that additional damage will be caused by repeating the disclosure.” See Ex. C.

(b)(3):50 USC 3024(i)

Therefore, the intelligence community cannot show that repeating the disclosure in the Article would cause any additional harm as the Document is in a persistent state of disclosure on a topic of extremely high worldwide interest.

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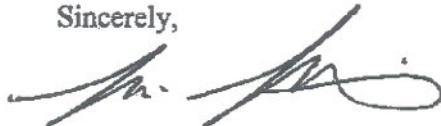
me with all copies of my secrecy agreement(s) that the USG believes restrict my ability to publish the Article in full so that I may review the contractual language for myself.

<sup>4</sup> Mr. Hedley’s article is available at CIA’s public website at <https://www.cia.gov/library/center-for-the-study-of-intelligence/kent-csi/docs/v41i3a01p.htm#rf16> (last accessed on March 17, 2014).

### 3. Conclusion

As Mr. Hedley made clear, “as long as the author complies with the secrecy agreement by seeking review and discloses no classified information that would cause demonstrable damage to national security, the courts hold nonofficial publication to be a fundamental exercise of First Amendment freedom.” Given that the Document is in a persistent state of disclosure due to its presence on the internet, no “demonstrable damage to national security” can be shown by the intelligence community in the event that the Article is published. As a result, it is clear that the Decision was incorrect. Therefore, I respectfully request that you reverse the Decision and authorize me to publish the Article without the requested deletions or revisions. Please note that nothing in this letter constitutes a waiver of any rights, legal or equitable, and I expressly reserve all of my rights. I look forward to your speedy response.

Sincerely,



Michael P. Richter

(b)(3):10 USC 424;(b)(6)

# **EXHIBIT A**



Michael Richter (b)(6)

## Appeal Suspense provided.-- Pre Publication Review Request from Mike Richter (14-030)

1 message

To: [REDACTED]  
Cc: [REDACTED]

Fri, Mar 7, 2014 at 9:55 AM

(b)(3):10 USC 424;(b)(6)

Michael,

Any submission for appeal should be submitted by April 5.

Regards,

Prepublication Review  
Office of Corporate Communications  
Defense Intelligence Agency

(b)(3):10 USC  
424;(b)(6)

—Original Message—

From: [REDACTED]  
Sent: Thursday, March 06, 2014 4:09 PM  
To: 'Michael Richter'  
Cc: [REDACTED]

(b)(3):10 USC  
424;(b)(6)

Subject: CLEARED WITH AMENDMENTS-- Pre Publication Review Request from Mike Richter (14-030)

Good Afternoon Mike,

DIA Prepublication Review has completed a coordinated review of your article, "Comedy and Terror in Guantanamo Bay." Reviewers have determined that it contains information inappropriate for disclosure in the public domain that must be deleted or revised prior to publication.

The article is cleared for open publication with the following:

(b)(3):50 USC 3024(i)

-If you add material to or, other than for minor editing, change the text that has been cleared for release, these additions or changes are subject to review and clearance prior to giving them to a publisher or anyone else. In such a case, please mark or otherwise clearly indicate the new material so we can expedite the review. Additional material that is subject to review includes photographs, photograph captions, illustrations, diagrams, tables, charts, or maps.

-If any official affiliation with DIA or the Department of Defense is to be noted in any author byline or biographic information, the article should include a disclaimer statement to the effect that "the views expressed in the paper are the author's personal ones and do not reflect the official policy or position of the

U.S. Government, the Department of Defense or any of its components."

You may appeal this determination by offering written justification to support reversal of the decision. You may forward the appeal to this office. Any appeal should be submitted this month. I will provide a hard date tomorrow.

For your records, the DOPSR case number for this review is 14-S-0806; our case number is 14-030.

Regards,

Prepublication Review  
Office of Corporate Communications  
Defense Intelligence Agency

(b)(3):10 USC 424;  
(b)(6)

Original Message

From: Michael Richter

Sent: Tuesday, February 25, 2014 3:27 PM

To:

Subject: Re: STATUS REPORT – Pre Publication Review Request from Mike Richter

(b)(3):10 USC 424;(b)(6)

I just reviewed DoD policy on pre-publication review and it is explicit that the material with which you have raised a concern is not a problem. As page 1 of the attached FAQs make clear, DoD only reviews "protected information gained while associated with the Department." As you know, I was a Russian foreign policy analyst and never dealt with anything related to al-Nashiri while in the IC. Thus, the information was not "gained while associated with the Department." Thank you.

VR/ Mike Richter

On Tue, Feb 25, 2014 at 1:38 PM, Michael Richter (b)(6)

wrote:

(b)(3):10 USC 424;(b)(6)

(b)(3):50 USC 3024(i)

Nice speaking with you. As I said, I was a Russian foreign policy guy in the IC.

verifying or disclosing classified information regarding al-Nashiri; all I can do -- and all I am doing -- is referencing a document that anyone with an internet connection can see. Thanks, Mike

On Tue, Feb 25, 2014 at 12:38 PM, (b)(6)

wrote:

It is already with proceedings; I expect a publishing decision this week.

Sent from my iPhone

> On Feb 25, 2014, at 12:35 PM, (b)(3):10 USC 424;(b)(6)

wrote:

>  
> I will be in touch. Also, for our edification, what is the deadline date for the Proceedings submission?

>  
> Regards,

>

> [REDACTED]  
> Prepublication Review  
> Office of Corporate Communications  
> Defense Intelligence Agency

>

(b)(3):10 USC 424;(b)  
(6)

>

>

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> -----Original Message-----

> From: [REDACTED] (b)(3):10 USC 424;(b)  
> Sent: Tuesday, February 25, 2014 12:31 PM

> To: [REDACTED]

> Subject: Re: STATUS REPORT-- Pre Publication Review Request from Mike Richter

>

> Ok. We'll work it out.

>

> Sent from my iPhone

>

>> On Feb 25, 2014, at 12:14 PM, [REDACTED] (b)(3):10 USC 424;(b)(6)

>>

>> Michael,

>>

>> Because the content warranted evaluation by third parties, I am unable to provide a firm ETA  
at this time. I can however tell you [REDACTED] (b)(3):50 USC 3024(i)

>>

>> Regards,

>>

>> [REDACTED]  
>> Prepublication Review  
>> Office of Corporate Communications  
>> Defense Intelligence Agency

>>

>> (b)(3):10 USC 424;(b)(6)

>>

>> [REDACTED] (b)(3):10 USC 424;(b)(6)

>> -----Original Message-----

>> From: Michael Richter [REDACTED]

>> Sent: Monday, February 24, 2014 1:20 PM

>> To: [REDACTED]

>> Subject: Re: STATUS REPORT-- Pre Publication Review Request from Mike Richter

>>

>> Thank you for the note. If there's a problem, please let me know. Do you have an ETA? Best,

Mike

>>

>>

>> On Mon, Feb 24, 2014 at 1:14 PM, (b)(3):10 USC 424;(b)(6) wrote:  
>>  
>> Good Afternoon Michael,  
>>  
>> The product review is taking a little longer than expected. Just wanted to provide you an update on the case status.  
>>  
>> Regards,  
>>  
>> (b)(3):10 USC 424;(b)(6)  
>> Prepublication Review  
>> Office of Corporate Communications  
>> Defense Intelligence Agency  
>> (b)(3):10 USC 424;(b)(6)  
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>>  
>> —Original Message—  
>> From: (b)(3):10 USC 424;(b)(6)  
>> Sent: Friday, February 07, 2014 4:15 PM  
>> To: 'Michael Richter'  
>> Subject: RE: FOLLOW-ON REQUEST— Pre Publication Review Request from Mike Richter  
>>  
>> Thanks, Michael.  
>>  
>>  
>>  
>> Regards,  
>>  
>>  
>> (b)(3):10 USC 424;(b)(6)  
>> Prepublication Review  
>> Office of Corporate Communications  
>> Defense Intelligence Agency  
>> (b)(3):10 USC 424;(b)(6)  
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>>  
>> From: Michael Richter (b)(3):10 USC 424;(b)(6)  
>> Sent: Friday, February 07, 2014 11:22 AM  
>> To: (b)(3):10 USC 424;(b)(6)  
>> Subject: Re: FOLLOW-ON REQUEST— Pre Publication Review Request from Mike Richter  
>>

>>  
>> (b)(3):10 USC  
424;(b)(6)

>> Hi [redacted]

>>

>>

>>

>> [redacted] (b)(3):50 USC 3024(i)

>>

>>

>>

>> [redacted] (b)(3):50 USC 3024(i)

>>

>>

>> Let me know if you need anything else.

>>

>>

>> Thanks, Mike

>>

>> On Fri, Feb 7, 2014 at 11:13 AM, [redacted] (b)(3):10 USC 424;(b)(6)

wrote:

>> Good Afternoon Mr. Richter,

>>

>>

>>

[redacted] (b)(3):50 USC 3024(i)

>>

>>

>> Regards,

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>> [redacted] Prepublication Review

>>

>> Office of Corporate Communications

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>> Defense Intelligence Agency

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(b)(3):10 USC 424;  
(b)(6)

>> (b)(3):10 USC 424;(b)  
>> (6)  
>>  
>> From: [REDACTED]  
>> Sent: Tuesday, January 28, 2014 3:57 PM  
>> To: 'Michael Richter'  
>> Cc: [REDACTED]  
>> Subject: RE: Pre Publication Review Request from Mike Richter  
>>  
>>  
>> Mike-  
>>  
>>  
>>  
>> Hope all is well with you. We have your article. Will put it through the necessary  
review/clearance wickets and get back to you as quickly as possible.  
>>  
>>  
>> (b)(3):10  
>> USC 424; whom I've copied on this note, will be handling our review.  
>> (b)(6)  
>> Thank you.  
>>  
>>  
>> (b)(3):10 USC  
>> 424;(b)(6)  
>>  
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>>  
>>  
>> Prepublication Review  
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>> Office of Corporate Communications  
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>> Defense Intelligence Agency  
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>>  
>>  
>> From: Michael Richter [REDACTED] (b)(3):10 USC 424;(b)(  
>> Sent: Monday, January 27, 2014 5:34 PM  
>> To: [REDACTED]  
>> Subject: Pre Publication Review Request from Mike Richter  
>>  
>>  
>>  
>> Hi [REDACTED] (b)(3):10 USC  
>> 424;(b)(6) (b)(3):10 USC 424;(b)  
>> (6)  
>>  
>>  
>> Long time no speak. Attached is an article I drafted and which is under consideration by  
"Proceedings," a publication of the US Naval Institute. [REDACTED] a senior executive at the USNI,  
and a former DIA SES, asked me to draft it for the publication's review. I don't think there are any issues  
with it, but thought it good form to show it to you for review.  
>>  
>>  
>>

>> Also, I did get an offer to work on a tv show with CBS...but then the offer was pulled. So nothing has panned out there...yet.

>>

>>

>> Best, Mike Richter

>>

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>>

>>

>>

The next 10 pages are  
withheld in full and not  
included.

# **EXHIBIT B**

# **EXHIBIT C**

## Library

[Home \(I\)](#) [Library \(I\)](#)  
[Center for the Study of Intelligence \(Library/center-for-the-study-of-intelligence\)](#)  
[Studies Archive Indexes \(Library/center-for-the-study-of-intelligence/kent-csi\)](#)  
[Documents \(Library/center-for-the-study-of-intelligence/kent-csi/docs\)](#)  
Publications Review Board,

### Publications Review Board,

Unclassified

#### Reviewing the Work of CIA Authors Secrets, Free Speech, and Fig Leaves (U)

**JOHN HOLLISTER HEDLEY**

CIA's Publications Review Board (PRB) and its small staff perform a balancing act more than 300 times a year, navigating a process sanctioned by the US Supreme Court to clear the writing of Agency authors for nonofficial publication. The challenge: to balance CIA's secrecy agreement with the Bill of Rights. Business is brisk, as a growing number of former CIA employees seek to become published authors—especially former operations officers reflecting on their clandestine careers abroad.

The variety of material the PRB has reviewed for publication in recent years has encompassed former President Reagan's memoirs, the Brown Commission Report on the Roles and Capabilities of the US Intelligence Community, and broadsides from timeworn Agency antagonist Philip Agee. Former employees submit manuscripts directly to the PRB, as do some nonemployees—such as former Defense Secretary Weinberger, Iran-Contra Independent Counsel Judge Lawrence Walsh, and former members of Congressional oversight committee staff—who, because of their special access to CIA information, seek PRB review before publishing.

The daily "take" logged in by the five-person PRB staff ranges from 1,000-page book manuscripts to one-page letters to the editor. There are speeches, journal articles, theses and op-eds, book reviews, and movie scripts. There are scholarly treatises, works of fiction, and, recently, a cookbook featuring a collection of recipes acquired and served by Agency officers and spouses around the world. Perhaps the most novel review (no pun intended) involved an interactive CD-ROM video spy game co-authored by former Director of Central Intelligence (DCI) William Colby and KGB Gen. Oleg Kalugin.

*The reason all this writing is reviewed lies in the Agency's need—and its employees' contractual obligation—to protect sources and methods of collection and analysis.*

*The authority, for both the secrecy agreement and prepublication reviews, rests on the statutory responsibility of the DCI to protect sources and methods and is found in the National Security Act of 1947 and the CIA Act of 1949 as amended, as well as in Executive Orders 12333 and 12958.*

*The sole purpose of prepublication review is to assist authors in avoiding inadvertent disclosure of classified information which, if disclosed, would be damaging to national security—just that and nothing more.*

*What is involved in each review is neither censorship nor a declassification process but determining the absolute minimum of deletions, if any, that would uphold both the DCI's authority and the individual's constitutional right to free speech under the First Amendment, a right the courts take especially seriously.*

Permission to publish cannot be denied solely because information may be embarrassing to CIA or critical of it, or inaccurate. People have a right to their opinions, and they have a right to be wrong. People also have a right to write; our reviews are not aimed at discouraging them. My goal as the Chairman is to be an honest broker, not merely identifying problems but suggesting solutions. Our purpose is to help people to publish in a way that will not cause a problem for them, the Agency, or for the country.

It usually is not hard to write around a required deletion, even when it involves a paragraph or more, in a way that enables the author to retain the point of a passage and the flow of the text. Often small changes do the job, such as referring to the "office" rather than the "CIA station," or describing a liaison official by an actual government or military title, or in general terms as a senior official, without a specific connection to an intelligence service.

Especially sensitive subjects can be more complicated—usually if they have an impact on ongoing operations, identify particular cover or liaison arrangements, or involve a country with which relations are particularly delicate. But over the past two years, only a few authors have thrown in the towel in the face of such major review problems that they decided not to publish, at least for the time being. One had to give up on the book he had taken two years to write because he had written of a cover life that could not be revealed. Sadly, he was left to ponder the dubious prospect of redoing—and marketing—the book as the life of an investment consultant rather than as a spy.

But success is the rule. The process works. Negotiations with authors almost always result in finding acceptable substitute language and a meeting of the minds: of more than 600 reviews during the past two years, only three were appealed.<sup>(1)</sup> Not all sailed through smoothly, to be sure. Some experienced delays, especially one seemingly snake-bit, embarrassingly protracted one which a prospective author endured with remarkable good grace, and which happily came to a successful conclusion with his manuscript approved.

#### Reviews Are Not Optional

Reviewing the writing of former employees is not an option for the Agency; it is not a service offered as a convenience. The Federal courts have sanctioned the process, which stems from the DCI's statutory obligation to protect sources and methods. The courts have ruled, in effect, that prepublication review is the only way to carry out the DCI's statutory mandate consistent with the First Amendment. In addition, prepublication review is essential if the Agency is to uphold the validity of the secrecy agreement CIA staff employees and contractors sign as a condition of employment.

Nor is it optional for the individuals who sign a secrecy agreement to seek the review. It is specifically required to protect the sources and methods of collection and analysis they will learn about and which, if revealed, could cost heavily in lives, resources, and continued access to critical national security information.

The review requirement is spelled out clearly in the secrecy agreement, in which the signer agrees to submit for review any material "I contemplate disclosing publicly or that I have actually prepared for public disclosure, either during my employment...or at any time thereafter, prior to discussing it or showing it to anyone who is not authorized to have access.... I further agree that I will not take any steps toward public disclosure until I have received written permission to do so from the Central Intelligence Agency."<sup>(2)</sup>

The courts have held that this signed agreement is a lifetime enforceable contract.<sup>(3)</sup> The courts also have noted that the secrecy agreement is a prior restraint of First Amendment freedom. But they ruled it a legitimate restraint, provided it is limited to the deletion of classified information and so long as a review of a proposed publication is conducted and a response given to its author within 30 days.<sup>(4)</sup>

If an author does not submit material for review, the Agency can go to court to block publication or can seize the profits if publication already has occurred, even if there is no classified information involved.<sup>(5)</sup> In deciding to recommend litigation to the Office of the General Counsel (OGC), the Board must be convinced that the Agency can articulate harm to national security flowing directly from the disclosure. And the Board must weigh the risk of going to court, which not only may result in an adverse ruling but which also means identifying and calling attention to demeriting information and providing publicity for the book that contains it. Each review thus requires a policy judgment which weighs damage and the prospect of litigation, with judicial precedent in mind.

The court decision in the Marchetti case—growing out of an appeal by former CIA employee Victor Marchetti from a district court injunction requiring him to submit for review his book entitled *The CIA and the Cult of Intelligence*—became a benchmark for the Agency's prepublication reviews. In it, the court stated that Marchetti [read any CIA author] "may not disclose classified information obtained by him during the course of his employment which is not already in the public domain." (Marchetti at 1317; emphasis added.) The court also stated that "information, though classified, may have been publicly disclosed. If it has been, Marchetti [read any former CIA author] should have as much right as anyone else to republish it." This begs the question of how information still considered classified got into the public domain in the first place. But it places squarely on the Agency the burden of proof that additional damage will be caused by repeating the disclosure.

The courts also have held that an author may republish information if he or she can cite open sources for the same information.<sup>(6)</sup> This is a "fig leaf" the PRB may ask an author to wear as a way of indicating to readers that the information is in the public domain and does not necessarily come from unique, inside knowledge. For the PRB, keeping abreast of what is in the public domain on myriad subjects related to intelligence is a major and continuing challenge. It is a determination that comes into play with every review.

Through the mid-1970s, it was CIA's Office of Security that usually reviewed manuscripts intended for nonofficial publication, in association with the OGC and appropriate substantive components. But the marked increase in former employees writing on aspects of their Agency experience, and the Marchetti case in particular, made manifest the need to establish a more systematic review process in CIA. (It seemed clear that the Federal courts presumed that such a process was in place and that, if not, it had better be.)

CIA Headquarters Notice 178, dated 10 June 1978, formally established a Publications Review Board and designated the Assistant to the DCI for Public Affairs as chairman. The PRB began to function immediately, and its membership and responsibilities became a matter of regulation.<sup>(7)</sup>

Putting the PRB Chair and supporting Executive Secretariat in the DCI's area as part of public affairs was seen as a logical fit. That is where the Department of State, Department of Defense, and the FBI locate their review function, and it is the Agency office that deals above all with the public and almost exclusively with unclassified information. Another consideration was that the PRB often gets called on to assist other Intelligence Community organizations and to address publication issues by high-level officials, including former presidents, cabinet officers, and ambassadors who have had access to Agency information. Having the PRB in the DCI area seemed to facilitate such Community use of it.

Although the House and Senate intelligence oversight committees affirmed this organizational location, as did CIA's Inspector General in 1981 and 1991, a task force on the release of information, commissioned by DCI Robert Gates in 1992, proposed creating an information "czar" to bring together the Agency's information release programs and "be assisted by" the staff of the PRB. Gates signed a decision memorandum to this effect in January of 1993 but departed as DCI the same month. The concept of a "czar" and concomitant consolidation did not come to pass as envisioned. Nevertheless, later that year, the PRB staff was placed alongside two major release programs in the Directorate of Administration's Office of Information Technology. With the PRB there—and now in CIA's new Office of Information Management, created on 1 October 1997, where it has been designated the Publications Review Division (PRD)—went the much larger component handling matters related to the Freedom of Information Act as well as the recently developed automatic declassification program that is working on records 25 years old and older under Executive Order 12958. The Historical Review Group, previously based in the Center for the Study of Intelligence, joined the new office at the beginning of 1998.

The FOIA activity, the automatic records declassification program, and the historical review program are engaged in reviewing, declassifying, and releasing official Agency records—which the PRB does not do, although its functions are related to what is and what is not deemed classified. Marked improvement in clarifying and coordinating that relationship should result from the close, day-to-day working relationships being forged between prepublication review and the declassification and release activities in the Office of Information Management.

Unlike the declassification and release components, the PRB does not review or even possess Agency information apart from the records it keeps on reviews. The written material submitted to it is the private property of an author; it is copyrighted, proprietary information. The Agency could neither classify nor declassify it because it does not belong to the Agency. We simply have the right to review it. The PRD files manuscripts in a separate, vaulted area and makes them available only to those directly involved in the reviewing process. We are fortunate that the courts have endorsed that process, which validates it, but which also obligates us to adhere to it and to hold closely the material under review.

CIA regulations explain that the review requirement applies to "all writings and scripts or outlines of oral presentations intended for nonofficial publication, including works of fiction, which contain any mention of the CIA, Intelligence data or Intelligence activities, or material on any subject about which the author has had access to classified information in the course of his or her employment."<sup>[1]</sup>

So, if a former CIA analyst, for example, served for a time on a Balkan Task Force and, after retiring, wrote an article on US policy toward Bosnia, the analyst would be obligated to submit the piece for review because of the analyst's access to classified information on that subject area, even if the article did not specifically mention CIA or Intelligence. On the other hand, writing about the growing of azaleas or the inadequacy of public transportation, or writing a murder mystery or romance novel unrelated to intelligence would not need to be submitted for review.

The PRB is made up of senior officers representing each of CIA's four directorates—Administration, Intelligence, Operations, and Science and Technology—plus the especially pertinent offices responsible for cover and for personnel security, along with a legal adviser from the OGC. The idea is that each Board member be able to make focused, high-level policy decisions on behalf of his or her directorate and, in turn, help make the Board decision on behalf of the Agency within the 30-day time limit prescribed by the courts.

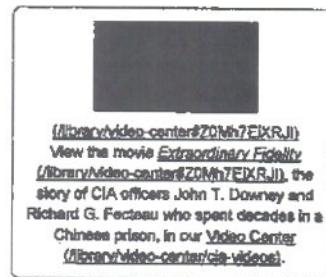
The Chair of the Board is empowered to make review decisions on its behalf, and indeed the entire Board rarely convenes. Inasmuch as a number of reviews are in process at any one time, including lengthy manuscripts, the usual procedure is for the PRB to manage the process, conducting research for precedents and consulting only those Board members whose equities are directly involved. We keep the full Board apprised on a biweekly basis of actions taken and the status of reviews in progress.

#### Standards Are Different

CIA's prepublication review proceeds on two tracks, one for current and one for former employees and contractors, and the tougher one is for those still on the job. Current employees and contractors have to submit material proposed for nonofficial publication through their supervisory chain of command to their Deputy Director or Head of Independent Office, although they may ask the PRB Chair for guidance as to whether any Agency review is necessary.

The reason for component review is that, for current employees and contractors, the Agency applies a stiffer standard: it may also deny permission to publish statements or opinions that could impair the author's performance of duties, interfere with the authorized functions of the Agency, or have an adverse impact on US foreign relations. For example, an analyst providing support to members of an arms control delegation probably should not expect to publish personal views that could undermine the ability of the team to negotiate. The Agency component in which the officer serves is best suited to make that kind of determination. For all component-approved material, the PRD then serves as the Agency's office of record.

The Board may take on the review of a current employee, however, at the request of an official in the employee's chain of command—usually if the proposed publication has Agency-wide implications or involves the equities of more than the employee's directorate. This was the case when a disaffected employee proposed publication of a book accusing the Agency of complicity in covering up evidence of gulf war syndrome; the head of this employee's directorate requested that the Board take over the review, which it did.



When replying to an author, the PRB's response either will identify words or passages for deletion or revision on the one hand or, on the other, will provide a *nihil obstat*, granting permission to publish by posing no objection. And no objection is just that: posing "no objection" to publication does not constitute official release, confirm accuracy, or endorse an author's views. We ask authors to help make this clear by publishing a disclaimer that spells it out, and most will do so.

When a CIA officer writes about a sensitive intelligence topic that already has been published elsewhere—for example, in a newspaper article—it tends to confirm the previous publication and lend credence to the story. It gives it more weight, and thereby might make it more damaging. But it does not make it an official acknowledgment. People often say, "Well, it might as well be!" Nevertheless, allowing something to be published unofficially, by a private citizen (even a recently resigned CIA officer), is not declassifying it. Deciding we will not go to court over a passage in a book does not mean we have released the subject of that passage. The courts have made clear that statements made by a former employee, regardless of rank, do not constitute official release or acknowledgment.<sup>(9)</sup> Because this is the case, the Agency may, in response to a Freedom of Information suit, refuse to declassify and officially release records on a subject which, paradoxically, former employees have written about without objection.

The unofficial nature of an individual's writing is the distinction that justifies and explains this apparent double standard. The fact that a reader is likely to infer authenticity and thus attach greater weight to the writings of a former CIA officer can be grounds for denying the author the freedom to write unofficially about official activities of the Agency and his or her involvement with them. But as long as the author complies with the secrecy agreement by seeking review and discloses no classified information that would cause demonstrable damage to national security, the courts hold nonofficial publication to be a fundamental exercise of First Amendment freedom.

Drawing the line about what really is sensitive is not that hard. What gets hard is having to give up on information you would rather not see published, but which you have to conclude you could not successfully litigate. If it is in the public domain, it is tough to judge that additional damage would be so compelling that it is worth going to court and taking a chance on an adverse decision and guaranteeing free publicity for the very subject we would rather not see in print. It is a calculated risk, and sometimes "you have to know when to fold 'em."

#### Definitions Change

The Board's interpretation of damage is not absolute and unchanging. Notwithstanding a firm commitment to fairness and evenhandedness and with every intention of applying standards uniformly, definitions just do not stand still. Definitions of "damage" and of "national security" are neither absolute nor constant. For one thing, an assessment of the likely damage from a disclosure as it pertains to a single country may change drastically from one period of time to another, depending on changing issues in our foreign relations and changing operational equities relating to another intelligence service. A good relationship five years ago may be exceedingly strained today over an issue that had not arisen five years ago. As a result, an author may have written something then, with no objection, that would not be allowed today. For another thing, the perception of threat clearly has changed in a palpable way.

The end of the Cold War has brought a recognition that national security is less threatened in the wake of that global conflict between two superpower alliances involving, as it did, a pervasive, worldwide espionage war in which the ultimate stakes were a nuclear holocaust. Nonetheless there are still threats and new sensitivities to which the Board continues to apply key principles for protecting the Agency's ability to function effectively. But in the aftermath of the Cold War era, the same dangers do not always apply to the same degree when looking back into that historical context. Coupled with that is another reality: a commitment to greater openness declared by the president, Congressional leaders, and a succession of DCIs. So it is not surprising that some former CIA officers have concluded that "now it can be told," and they are writing more candidly about subjects no longer seen, in many instances, as damaging.

A notable example—one that, indeed, has effectively set a new standard—is a book entitled *A Spy for All Seasons*, published early in 1997 by a colorful, former senior CIA officer, Duane C. ("Dewey") Clarridge. Whatever its sales outside Washington, the book seems to have been snapped up by former Agency officers interested in writing their own books, and they use it as a ready reference and guide! Clarridge sought to break new ground, and did, by writing the story of his operational career, assignment by assignment. He played by the rules. He submitted his manuscript for review, and even came to CIA Headquarters to answer questions from reviewers who were stumped by some of the operations he recounted, only to discover that, for security reasons, he had invented composite agents and operational scenarios, as he notes in the foreword of his book.

The PRB—and especially the reviewers to which it deferred in the Directorate of Operations (DO), where Clarridge spent his career—reviewed the book carefully and thoroughly. It was a complicated review, involving several components and more than three decades of people, places, and operational activity. Clarridge was pushing the envelope, no question. He told where he served and when, and he said a lot about what he did, but he did not reveal cover or sources. In reviewing the book, the Board relaxed a restriction previously applied during the Cold War in favor of allowing former officers to say where they served, so long as that fact alone is not damaging to national security—as it could be in some locales—and to describe in general terms what they did, so long as they do not reveal sources, cover arrangements, sensitive liaison relationships, or covert facilities.

The reviewers now may allow an author to say he or she was the CIA chief in a certain place, but not the chief of station. This is not a distinction without a difference. A station is a covert facility, widely held to be housed in US embassies and connecting a sizable and continuing CIA presence condoned by the host country. It suggests a liaison connection and operations

directed from the embassy in conjunction with the official US diplomatic presence. Being described as the CIA chief in a country, however, could mean heading up a small presence, perhaps short term, and perhaps from an office building. Damage presumably is avoided by avoiding reference to a precise facility or cover arrangement and by discussing generic espionage activities without all the particulars. Sometimes it is with such fine lines that damage boundaries are drawn.

#### The Claridge Precedent

Allowing former officers to recount where and when they served, rather than limiting them to broad generalizations such as "assignments in Latin America and in Western Europe during the 1970s," is an important gain for an author seeking to convey meaning and understanding through a first-person account. Although introduced with the review of the Claridge manuscript, what is now dubbed "the Claridge precedent" subsequently has been applied in all reviews—and even reviews that authors requested after the Claridge book came out. Each manuscript necessarily is judged on a case-by-case basis, but in most instances—though not all—exact locations and the nature of assignments now can be revealed. Thus, in a review following Claridge's, an author was allowed to recount in considerable detail his role in what was then the Congo, but in another part of the same manuscript he could refer only to an assignment in "an Asian capital."

Some CIA retirees were aghast when Claridge's book came out, contending that he was allowed to say anything and everything. That was hardly the case, as he doubtless would testify. The Board sent Claridge a 19-page, single-spaced letter calling for deletions from his original manuscript, each of which he made. Nevertheless, his review—while making the life of reviewers more difficult by requiring them to weigh, rather than summarily rule out, exact references to time and place—represents a significant gain for authors to come. It is progress that is worth an inconsistency with previous reviews. And it preserves that which is truly sensitive. Protection of cover, for example, did not prevent the telling of a good story. The deletions and revisions such principles require are not unreasonable. (At the offices of the American Civil Liberties Union, while discussing with an ACLU attorney a PRB review brought to it after a lost appeal, it was interesting to see a copy of *A Spy for All Seasons* at the ready. The conversation made clear that the book had been perused line by line. In the event, the ACLU decided it would not litigate, once it was apparent that the review conformed to that which was given to the Claridge book.)

Publication of *A Spy for All Seasons* probably will encourage others to write similar books, but there already was a tendency for operations officers to publish to an unprecedented extent. (Before Claridge's book, for example, *Studies in Intelligence* last year, in Vol. 40, No. 3, 1996, published an unclassified 45-page article by William J. Daugherty entitled "A First Tour Like No Other," the first-person account of a case officer whose first assignment was to Tehran, where he was held hostage for 444 days.)

#### Books Are on the Rise

What we are seeing now in prepublication review is a trend toward more books as a percentage of what we review (more than 18,000 manuscript pages a year for the second consecutive year) and more books by former operations officers about operational activity, which make for more complicated and time-consuming reviews because of the need to check operational files over an extended period. (Current employees who publish unofficially tend to be mainly from the Directorate of Intelligence; former employees who publish are primarily from the DO.) And we get more positive treatments of the Agency. There was a time when word that a former officer was writing a book made insiders cringe at the prospect of a personal vendetta exposing cover, liaison arrangements, sources, and methods. Careers could be damaged and the Agency's reputation almost certainly tarnished by charges that would not be rebutted. Today, former Agency authors almost invariably assert that their motivation is the good of the Agency and a sense of history.

To be sure, what is good for the Agency often is in the eye of the beholder (or the author). For example, some observers saw in Evan Thomas's *The Very Best Men* a positive portrayal of dashing figures in the Agency's early history, while some reviewers decried its subjects as the very worst men. Claridge believes *A Spy for All Seasons* is a "good news" story, but not everyone feels he did the Agency a favor. There still are some at CIA—especially in the DO, where there understandably is a keen awareness that one's working life rests on protecting sources, cover arrangements, and Agency capabilities in particular overseas locations—who believe it is highly inappropriate, if not dead wrong, for those who served in a secret capacity in a secret organization to go public in retirement, no matter how well intentioned the tales that they tell. Yet many inside the Agency, probably most of the general public, and virtually all scholars and journalists see greater openness as a positive development. They welcome the candor that helps dispel the notion that everything CIA has done in secret, especially in its overseas operations, has been sinister, scandalous, or stupid.

Although a lot of what we review will never see the light of day, much of it becomes a valuable contribution to intelligence literature. Examples include Dino Brugioni's *Eyeball to Eyeball: The Inside Story of the Cuban Missile Crisis*; John Waller's *The Unseen War in Europe*; former DCI Robert Gates's *From the Shadows*; Claridge's autobiographical volume; Elizabeth McIntosh's *Sisterhood of Spies*; and a forthcoming book by James H. Critchfield tentatively entitled *Germany: From Enemy to Ally*. David Murphy's *Battleground Berlin* was widely and favorably reviewed on both sides of the Atlantic and touted by *The New York Times Book Review* as one of the notable nonfiction books of 1997. Former DCI Richard Helms—assisted by William Hood, a former operations officer and published author of *Mole* and several spy novels—is working on a retrospective about Helms's time at the Agency. If anything, such interesting writing by Agency authors will enhance CIA's reputation and credibility. They help educate, inform, dispel misconceptions, and improve understanding.

**Facing a New Era**

Where are we headed with prepublication review in an era of greater openness? Not down a slippery slope to a diminished ability to function effectively as a secret organization. On the contrary, what we are seeing is a new era based on two indisputable facts: the Cold War is over, and this is a free country. CIA was properly cut a lot of slack during the height of the Cold War, and to an extent it still is. But ours is a robust democracy in which people want and deserve to know more about an organization, even a secret one, that exists to serve them. We have to respond to that interest even as we are responsible to our statutory obligations to keep certain sensitive matters secret.

The important thing is for us to be reasonable and professional about what we protect. It does not take a genius to know what information requires a hard look; for example, in an age of terrorism and for privacy act considerations, we have to protect identities not already in the public domain. Also taboo—because they impact adversely our ability to conduct our business, most of it necessarily in secret—are cover arrangements, liaison relationships, covert facilities, and unique collection and analytic capabilities. These constitute the sources and methods that truly need protection. For the most part, they can easily be avoided without keeping an author from telling a story or restricting an author's opinion on a variety of intelligence subjects.

In prepublication reviews, we have to show we know the difference between what truly is sensitive and what is not. We do not earn respect just by saying "no," but neither do we earn respect just by giving away information. Our unique role is to judge whether a denial of disclosure would stand up in court, whether we could make a compelling case in a court of law that specific damage to US national security would result. We can have it both ways: we can protect that which needs to be protected, while being forthcoming about intelligence activities in a way that can help educate, inform, enlighten, and even entertain the general public. That is the cost of doing business in this free society we help to preserve; trying to have it both ways is a challenge that comes with the territory.

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**John Hollister Hedley** is Chairman of the PRB.

**NOTES**

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One appeal—of 514 reviews from the fall of 1995 through the fall of 1997, when this article was written—was dropped. It became irrelevant when CIA no longer asserted classification for the gulf war documents in question. In another appeal, the Board's decision was upheld; in the third, the Board's decision was partially upheld and partially reversed in the author's favor. Appeals of PRB determinations go to the Agency's Executive Director via the General Counsel, who assesses the legal sufficiency of the Board's action. If not satisfied by this administrative process, the author's recourse is to litigate.

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CIA Secrecy Agreement, Form 368.

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The US Supreme Court decision can be found in *US v. Snapp*, 444 U.S. 509, N.3 (1980).

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The 30-day time constraint was set forth by the circuit court decision in *US v. Marchetti*, 466 F2d 1309, 1317 (4th Cir. 1972). It was reiterated in *US v. Snapp*, 565 F2d, 934 (4th Cir. 1979), and it has been adopted as the standard by the Department of Justice.

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*US v. Snapp*, 444 U.S. 509, N.3 (1980). Again, the secrecy agreement is an enforceable contract requiring the author to submit material for review; failure to comply is a violation of the contract, whether any deletions ultimately would be required.

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*McGehee v. Casey*, 718 F.2d 1141 (D.C. Cir. 1983).

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Initially issued 27 September 1979 as Headquarters Regulation 6-2, revised 14 March 1995 and currently in effect as Agency Regulation (AR) 6-2.

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AR 6-2.

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*Afshar v. Dept. of State*, 702 F.2d 1130-35 (D.C. Cir. 1983).

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*Unclassified*

Posted: May 08, 2007 08:56 AM  
Last Updated: May 08, 2007 08:56 AM

